



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

August 28, 2003

S. 1264 **FCC Reauthorization Act**

*As ordered reported by the Senate Committee on Commerce, Science,
and Transportation on June 26, 2003*

SUMMARY

S. 1264 would authorize the appropriation of about \$1.6 billion for operations of the Federal Communication Commission (FCC) over the 2004-2008 period. The bill also would increase the maximum penalties imposed on certain telecommunications providers for violating regulations relating to slamming, deceptive marketing, and other unlawful practices. In addition, the bill would restrict the applicability of bankruptcy laws to any debts owed to the government as a result of auctions of licenses to use the electromagnetic spectrum. Finally, S. 1264 would clarify the frequency and nature of the FCC's review of regulations concerning ownership of television, radio, and newspapers and would modify other regulatory policies governing television stations.

Assuming appropriation of the amounts specified in S. 1264, CBO estimates that implementing the bill would have a gross cost of about \$1.5 billion over the 2004-2008 period. Most of this spending would likely be offset, however, by regulatory fees authorized to be collected under current law. Assuming future appropriation acts allow the FCC to continue to collect fees, we estimate that the net discretionary cost would total \$57 million over the 2004-2008 period. CBO also estimates that enacting S. 1264 would increase revenues by \$1 million in 2004 and by a total of \$5 million over the 2004-2008 period. Finally, CBO estimates that implementing the bill would reduce direct spending by \$1 million in 2004 by limiting the use of bankruptcy proceedings in resolving certain troubled loans.

S. 1264 would preempt state laws related to bankruptcies and insolvencies by holders of spectrum licenses issued by the FCC. Such a preemption of state law is an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of intergovernmental mandates in S. 1264 would be small and would not exceed the threshold in UMRA (\$59 million in 2003, adjusted for inflation).

S. 1264 would impose private-sector mandates as defined in UMRA on the affiliates of the top four commercial broadcast TV stations, multi-channel video programming distributors serving more than 50,000 subscribers, and owners of television stations. Because of uncertainties about the interaction of future market conditions for television stations and the implementation of national market audience caps, CBO cannot estimate whether the direct costs of all the mandates in the bill would exceed the annual threshold established in UMRA (\$117 million in 2003, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1264 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION^a					
Gross FCC Spending From Authorizations in S. 1264					
Estimated Authorization Level	288	306	326	342	342
Estimated Outlays ^b	245	292	313	330	332
Less: Offsetting Collections ^c					
Estimated Authorization Level	-261	-278	-295	-310	-310
Estimated Outlays	-261	-278	-295	-310	-310
Net FCC Spending From Authorizations in S. 1264					
Estimated Authorization Level	27	29	30	32	32
Estimated Outlays ^b	-16	14	18	20	21
CHANGES IN REVENUES					
Estimated Budget Authority	-1	-1	-1	-1	-1
Estimated Outlay	-1	-1	-1	-1	-1
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	-1	0	0	0	0
Estimated Outlay	-1	0	0	0	0

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- a. These figures exclude roughly \$100 million per year that the FCC has spent recently for expenses associated with issuing licenses through competitive bidding procedures. Those expenses are from proceeds of spectrum auctions. The FCC's authority to conduct auctions—and hence, finance certain licensing costs out of spectrum proceeds—will expire at the end of 2007.
 - b. In addition to the sums shown in the table, outlays for fiscal year 2004 would also include \$32 million from the FCC's 2003 and 2004 appropriations.
 - c. The FCC is authorized to collect fees that offset the agency's annual appropriations. The amount collected is dependent on the amount appropriated.
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BASIS OF ESTIMATE

For this estimate, CBO assumes that this bill will be enacted near the beginning of 2004 and that the amounts authorized will be appropriated each year. Outlay estimates are based on historical spending for FCC activities.

Spending Subject to Appropriation

S. 1264 would authorize the appropriation of \$1.6 billion for FCC operations over the 2004-2008 period. (The FCC appropriation for 2003 is \$271 million.) This total includes both specified authorizations (\$281 million in 2004 and \$1.6 billion over the 2004-2008 period) and an authorization of the sums necessary to cover certain indefinite costs, such as future pay raises for employees. CBO estimates that those indefinite costs would average about \$7 million a year and would total \$34 million over the 2004-2008 period. Based on the agency's historical spending patterns, CBO estimates that implementing S. 1264 would increase the FCC's gross outlays by \$245 million in 2004 and \$1.5 billion over the 2004-2008 period, assuming appropriation of the authorized amounts.

The FCC's gross spending is typically offset by regulatory fees. The amount collected is specified in annual appropriation acts and, over the last few years, has covered about 90 percent of the amount appropriated. Assuming that future appropriation acts would require collections to continue at that rate, CBO estimates that proceeds from those fees would total about \$1.5 billion over the 2004-2008 period. In that case, the FCC's net spending would increase by \$57 million over the 2004-2008 period under S. 1264.

S. 1264 would authorize the appropriation of \$342 million to the FCC for 2008. That amount, however, may not be sufficient to cover all of the FCC's expenses that year. Under current law, amounts spent by the FCC to conduct auctions of licenses to use the electromagnetic spectrum are financed out of auction proceeds. The FCC expects to spend \$97 million in 2003 for such costs, which are in addition to the amounts funded by appropriations. Once the FCC's auction authority expires at the end of 2007, the agency will

have to award licenses administratively rather than through competitive bidding. Because such costs—which might be lower or higher than the amount spent to award licenses through auctions—cannot be recovered from auction proceeds in 2008, such costs will have to be absorbed within the amounts authorized to be appropriated for 2008.

Revenues

S. 1264 would raise the maximum forfeiture amounts (in effect, fines) imposed on certain telecommunications providers for violations of certain regulations relating to slamming (that is, switching telecommunications providers without a consumer's consent), deceptive marketing, and other unlawful practices. The maximum dollar amounts would be increased 10-fold. The FCC collected \$8 million in 2001 and \$31 million in 2002 from enforcement actions, which included forfeitures and consent decrees. Based on information from the FCC, CBO expects that the increase would serve as a significant deterrent so that firms would be more likely to comply with the regulations, resulting in no significant effect on revenues.

According to the FCC, the forfeiture limits also provide a general structure for negotiating consent decrees in which firms agree to take actions to bring about compliance and, in some cases, to make voluntary payments to the federal government. Increasing the limits on forfeitures would likely increase the payment amounts agreed to in such consent decrees, and therefore, increase federal revenues. In the past 18 months, the FCC has negotiated consent decrees with payments ranging from under \$1 million to over \$6 million. CBO estimates that raising the forfeiture limits would increase governmental receipts by \$1 million in 2004, by \$5 million over the 2004-2008 period, and by \$12 million over the 2004-2013 period. Because of the case-specific and circumstantial nature of each consent decree, this estimate is subject to substantial uncertainty.

Direct Spending

S. 1264 would restrict the applicability of bankruptcy laws to debts owed to the government as a result of FCC auctions of licenses to use the electromagnetic spectrum. CBO expects that the restrictions in S. 1264 would increase recoveries on outstanding FCC loans primarily by avoiding some of the litigation delays characteristic of bankruptcy proceedings and by allowing the government to retain a higher share of the proceeds from affected licenses. We estimate that enacting those provisions would reduce the subsidy cost of outstanding loans by about \$1 million on a present-value basis. Under credit reform procedures, this change would be recorded in the year the legislation is enacted, which CBO assumes would be 2004.

CBO expects that these provisions would primarily affect companies that have borrowed money from the FCC to pay for spectrum licenses and that had not filed bankruptcy claims before the cut-off date specified in the bill (June 26, 2003). The FCC issued direct loans totaling about \$10 billion over the last several years but stopped providing loans after the program experienced widespread defaults and bankruptcies. About two to three borrowers have filed bankruptcy each year, affecting about \$7 billion of the FCC's loan portfolio.

Based on trends in the FCC loan program, CBO assumes that additional bankruptcy filings are likely to occur in the future. The number of potential bankruptcies would likely be small, however, because most of the active loans will mature in 2007. Likewise, the size of the affected loans would be much smaller than in the past. According to the FCC, the value of active loans (those not paid off, in bankruptcy, or in default) currently totals \$230 million, with a few loans of about \$50 million but most others averaging about \$1 million each. The estimated savings of \$1 million is equivalent to a 20 percent increase in recoveries from loans valued at about \$5 million.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Section 6 would preempt state laws related to security interests in licenses issued by the FCC. Under the existing Uniform Commercial Code, security interests in such licenses are perfected by filing a financial statement with a state. States charge a small fee to cover administrative costs for the filing. Section 6 provides that the FCC may establish an office for the recording and perfection of a security interest in licenses issued by the FCC without regard to otherwise applicable state law. Enacting this provision would preempt state law and reduce state collection of filing fees, but we estimate that the cost to states would be insignificant.

Section 6 also provides that bankruptcy law, defined to include any federal or state law regarding insolvencies or receiverships, shall not be applied to avoid or delay a debt obligation to the United States arising from an auction or license issued by the FCC or to avoid the cancellation of such licenses because of failure to meet an FCC licensing condition. To the extent that current state laws may be applied for such purposes, section 6 would preempt those laws. Preemption of state law is a mandate as defined in UMRA. However, CBO estimates that those intergovernmental mandates would not impose any significant costs on states and therefore would not exceed the threshold in UMRA (\$59 million in 2003, adjusted for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 1264 would impose private-sector mandates as defined in UMRA on certain commercial broadcast TV stations, multi-channel video programming distributors, and owners of television stations. Because of uncertainties about the interaction of future market conditions for television stations and the implementation of national market audience caps, CBO cannot estimate whether the direct costs of all the mandates in the bill would exceed the annual threshold established in UMRA (\$117 million in 2003, adjusted annually for inflation).

The FCC adopted rules concerning video description during television programming that became effective April 2002. Video description is the aural description of a program's key visual elements that is inserted during natural pauses in program dialogue. It generally describes actions that are not otherwise reflected in the dialogue, such as the movement of a person in a scene. The video description rules required affiliates of the top four commercial broadcast television networks (ABC, CBS, Fox, and NBC) and multi-channel video programming distributors (cable systems, etc.) with 50,000 or more subscribers to provide a minimum of 50 hours per quarter of programming with video description in their top markets. In November 2002, the federal court struck down those rules. Section 9 would reinstate them. Because the rules were in effect for several months, a majority of the industry has already purchased the equipment to comply with the rule. According to government and industry sources, the cost of providing video description averages from \$1,000 to \$4,000 per program hour depending on the type of programming. CBO estimates that the annual incremental cost to comply with the video description programming requirements would not be substantial (well below UMRA's statutory threshold).

The FCC's National Television Ownership Rule prohibits an entity from owning multiple television stations which have an aggregate national audience reach exceeding a certain percentage. The rule includes a "discount" for UHF television stations. The UHF television discount attributes 50 percent of television households in a local television market to the audience reach of a UHF television station for purposes of calculating whether a television station owner complies with the national audience reach cap. Section 12 would repeal the 50 percent discount for UHF stations granted, transferred, or assigned after June 2, 2003, and for all existing UHF stations beginning January 1, 2008. When the UHF discount is eliminated, some owners of television stations may not be in compliance with the ownership caps and would be required to sell some stations. Other station owners may be prohibited from purchasing television properties that they would otherwise have been able to purchase under current law. Since the ownership caps and television station ownership through 2008 are not known, CBO cannot determine what the effect, if any, would be on owners of television stations. Consequently, CBO has no basis to estimate compliance costs.

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